

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

CONGREGATION BETH JOSEPH ZWI
DUSHINSKY and ELI KATZ,

Plaintiffs,

-against-

SECURED ASSET MANAGEMENT, LLC,

Defendant.

17-CV-4579

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that Defendant Secured Asset Management, LLC (“Secured Asset”) removes this civil action from the Supreme Court of the State of New York, County of Kings, to this Court under 28 U.S.C. §§ 1332, 1441, and 1446. As to grounds for removal, Secured Asset states as follows:

JURISDICTION AND GROUNDS FOR REMOVAL

1. As set forth below, removal is proper because as set forth below this Court has original jurisdiction over the action: There is complete diversity of citizenship among the parties, and the matter in controversy exceeds the sum or value of \$75,000. *See* 28 U.S.C. §§ 1332(a), 1441(a)-(b).

There Exists Complete Diversity of the Citizenship of the Parties

2. Secured Asset is a foreign Limited Liability Complaint organized under the laws of the State of Jersey, with its principal place of business located at 12 East Ramapo Avenue #519, Mahwah, New Jersey 07430. Secured Asset has two members, Mortgage Equity Investors, LLC (“Mortgage Equity”) and Brownlow Management, LLC (“Brownlow”). Mortgage Equity is a Limited Liability Company organized and existing under the laws of New Jersey with its principle place of business in New Jersey. The members of Mortgage Equity are: Joseph Carreta, a citizen of the State of Florida; and Dominick DiNapoli, a citizen of the State of New Jersey. Brownlow is a Limited Liability Company organized and existing under the laws of

the state of New Jersey, with its principal place of business at 12 East Ramapo Avenue, #519, Mahwah, NJ, 07430. Brownlow's sole member, Larry Cline, is a citizen of the State of New Jersey.

3. Plaintiff the Congregation Beth Joseph Zwi Dushinsky ("The Congregation") is a New York religious corporation and citizen of the state of New York located at 135 Ross Street, Brooklyn, NY.

4. Plaintiff Eli Katz is a citizen of the State New York residing at 4209 12th Avenue, Brooklyn, NY.

5. There exists complete diversity of citizenship among the parties. *See* 28 U.S.C. § 1332(a). "The citizenship of a limited liability company is determined by the citizenship of each of its members." *Mulberry Homes Vi., LLC v. Gargiulo, et al.*, 2016 WL 5409244 (E.D.N.Y. 2016), *citing Carter v. Healthport Techs, LLC*, 822 F.3d 47 (2d Cir. 2016).

The Amount in Controversy Exceeds \$75,000

6. As explained below, the fact underlying Plaintiffs' claims for declaratory and injunctive relief concern a commercial mortgage loan, which is held by Secured Asset. The Congregation is the Mortgagor. As set forth in the Summons with Notice, Plaintiffs dispute the validity of the mortgage loan.

7. At the time of the filing of this Notice of Removal, the total amount owed to Secured Asset that The Congregation seeks to avoid (discussed *infra*), is in excess of \$788,000.00, which is comprised of principal, default interest, escrow deficits for tax and insurance advances, and late charges.

8. Accordingly, the amount in controversy requirement is satisfied, as the amount in controversy exceeds the sum or value of \$75,000. *Id.*; *Katz v. Warner-Lambert Co.*, 9 F.Supp.2d 363 (S.D.N.Y. 1998) ("Where injunctive relief is requested, the amount in controversy is

measured by ‘the value of the object of the litigation’”), *quoting Hunt v. Washington State Apple Advertising Comm’n*, 432 U.S. 333 (1977). As such, removal is proper pursuant to 28 U.S.C. §§ 1332 and 1441.

THE STATE ACTION

9. On July 18, 2017, Plaintiffs commenced a civil action (the “State Action”) by filing a Summons with Notice, which was allegedly served upon Secured Asset via the New York Secretary of State on July 20, 2017. A copy of the Summons with Notice and the notices of appearance filed by Secured Asset, which comprise all process and pleadings from the State Action, are attached as Exhibit A, as required by 28 U.S.C. § 1446(a).

10. The State Action is pending in the Supreme Court of the State of New York, County of Kings, under index number 513898/2017 and is entitled *Congregation Beth Joseph Zwi Dushinsky and Eli Katz v. Secured Asset Management, LLC*. The Summons with Notice states that Plaintiffs seek a declaration that a certain promissory note and personal guaranty signed by Plaintiffs are of no force and effect, and that, pursuant to NY RPAPL Article 15, the related mortgage is unenforceable. Plaintiffs also seek a permanent injunction enjoining Secured Asset from enforcing the guaranty, note, and mortgage.

11. Secured Asset intends to counterclaim to foreclose on the mortgage, and enforce the note and guaranty. As stated above, the total amount owed to Secured is in excess of \$788,000.00

TIMELINESS AND OTHER REQUISITES

12. This Notice of Removal was properly filed in this Court under 28 U.S. C. § 1446(a), because the State Action is pending in the Supreme Court of the State of New York, County of Kings, which is located in this federal judicial district.

13. This Notice of Removal was timely filed pursuant to 28 U.S.C. § 1446(b).

14. This Notice of Removal is signed under Rule 11 of the Federal Rules of Civil Procedure, as required by 28 U.S.C. § 1446(a).

15. A copy of this Notice of Removal will be promptly filed with the Clerk of Supreme Court of the State of New York, County of New York, as required by 28 U.S.C. §1446(d).

16. Written notice of the filing of this Notice of Removal will be given promptly to Plaintiffs, as required by 28 U.S.C. § 1446(d).

WHEREFORE, Secured Asset respectfully requests that the requested that the State Action be removed to the United States District Court for the Eastern District of New York.

Dated: New York NY
August 4, 2017

COLE SCHOTZ, PC

By: 

Leo V. Leyva

1325 Avenue of the Americas

19th Floor

New York, New York 10019

Telephone: (212) 752-8000

*Attorneys for Secured Asset Management,
LLC*

TO:
Mark Illish, Esq.
Barry R. Feerst & Associates
194 South 8th Street
Brooklyn, NY 11211
Via Regular Mail and Email

EXHIBIT A

Summons with Notice and
Notices of Appearance

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No.

Date purchased:

-----X
CONGREGATION BETH JOSEPH ZWI DUSHINSKY
and ELI KATZ,

Plaintiffs,

-against-

SECURED ASSET MANAGEMENT, LLC,

Defendant.

-----X

To the above named Defendant(s):

Plaintiff(s) designate(s)
KINGS
County as the place of trial.

The basis of the venue is
Address of Plaintiff.

SUMMONS WITH NOTICE

Plaintiff(s) reside(s) at
County of Kings

YOU ARE HEREBY SUMMONED, to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

BARRY R. FEERST & ASSOCIATES

Dated: Brooklyn, New York
July 18, 2017

BY: _____/s/_____
Attorney(s) for Plaintiff
Office and Post Office Address
194 South 8th Street
Brooklyn, New York 11211
(718) 384-9111

Notice: The nature of this action is for a declaratory judgment determining that a promissory note and personal guarantee allegedly signed by the plaintiffs and purportedly assigned to the defendant are of no force and effect; and a claim pursuant to NY RPAPL Article 15 determining that the related mortgage is likewise unenforceable, should be vacated and expunged from the records of the City Registry for the subject premises; plaintiffs also seek a permanent injunction enjoining defendant from enforcing the purported guarantee, note and mortgage.

The relief sought is a Permanent Injunction and a Declaratory Judgment of the Court determining that the personal guarantee, note and mortgage described above are of no force and effect.

Upon your failure to appear, a judgment will be entered against you by default.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS**

Index No. 513898/2017

CONGREGATION BETH JOSEPH ZWI
DUSHINSKY, and ELI KATZ,

NOTICE OF APPEARANCE

Plaintiffs,

-against-

SECURED ASSET MANAGEMENT, LLC,

Defendant.

PLEASE TAKE NOTICE that the undersigned attorney for Defendant, Secured Asset Management, LLC, hereby demands that all papers in this action be served upon the undersigned at the office address set forth below.

Dated: New York, New York
August 4, 2017

COLE SCHOTZ P.C.

By: /s/ Jed M. Weiss
Jed M. Weiss
1325 Avenue of the Americas,
19th Floor
New York, NY 10019
Attorneys for Defendant, *Secured Asset
Management, LLC*